

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1394 be amended to read as follows:

1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:

3 "SECTION 1. IC 9-30-5-3, AS AMENDED BY P.L.291-2001,
4 SECTION 222, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2004]: Sec. 3. A person who violates section 1 or 2 of this
6 chapter commits a Class D felony if:

7 (1) the person has a previous conviction of operating while
8 intoxicated ~~and~~

9 ~~(2) the previous conviction of operating while intoxicated that~~
10 occurred within the five (5) years immediately preceding the
11 occurrence of the violation of section 1 or 2 of this chapter; ~~or~~

12 **(2) the person:**

13 **(A) is at least twenty-one (21) years of age;**

14 **(B) violates section 1(b) or 2(b) of this chapter; and**

15 **(C) operates a vehicle in which at least one (1) passenger**
16 **is less than eighteen (18) years of age."**

17 Page 2, delete lines 16 through 18, begin a new paragraph and insert:

18 "SECTION 3. IC 9-30-5-10 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) In addition to a
20 criminal penalty imposed for an offense under this chapter or
21 IC 14-15-8, the court shall, after reviewing the person's bureau driving
22 record and other relevant evidence, recommend the suspension of the
23 person's driving privileges for the fixed period of time specified under
24 this section.

25 (b) If the court finds that the person:

26 (1) does not have a previous conviction of operating a vehicle or
27 a motorboat while intoxicated; or

28 (2) has a previous conviction of operating a vehicle or a motorboat
29 while intoxicated that occurred at least ten (10) years before the
30 conviction under consideration by the court;

the court shall recommend the suspension of the person's driving privileges for at least ninety (90) days but not more than two (2) years.

(c) If the court finds that the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred more than five (5) years but less than ten (10) years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one hundred eighty (180) days but not more than two (2) years. The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay. If the court grants probationary driving privileges under this subsection, the court may order that the probationary driving privileges include the requirement that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(d) If the court finds that the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred less than five (5) years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one (1) year but not more than two (2) years. ~~The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay. If the court grants probationary driving privileges under this subsection, the court may order that the probationary driving privileges include the requirement that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.~~

(e) If the conviction under consideration by the court is for an offense under section 1(b) of this chapter, the court shall recommend the suspension of the person's driving privileges for at least one hundred eighty (180) days but not more than two (2) years.

(f) If:

- (1) the conviction under consideration by the court is for an offense under section 1(a), 1(c), or 2(a) of this chapter; and
- (2) the court determines that the person was at least twenty-one (21) years of age and operated a vehicle in which at least one (1) passenger was less than eighteen (18) years of age;

the court shall recommend the suspension of the person's driving privileges for at least one hundred eighty (180) days but not more than two (2) years.

(g) If:

(1) the conviction under consideration by the court is for an offense under section 1(b) or 2(b) of this chapter; and

(2) the court determines that the person was at least twenty-one (21) years of age and operated a vehicle in which at least one (1) passenger was less than eighteen (18) years of age;

the court shall recommend the suspension of the person's driving privileges for at least one (1) year but not more than two (2) years.

(h) If the conviction under consideration by the court is for an offense under:

(1) section 4 of this chapter;

(2) section 5 of this chapter;

(3) IC 14-15-8-8(b); or

(4) IC 14-15-8-8(c);

the court shall recommend the suspension of the person's driving privileges for at least two (2) years but not more than five (5) years.

~~(f)~~ (i) If the conviction under consideration by the court is for an offense involving the use of a controlled substance listed in schedule I, II, III, IV, or V of IC 35-48-2, **in which a vehicle was used in the offense**, the court shall recommend the suspension or revocation of the person's driving privileges for at least six (6) months.

SECTION 4. IC 9-30-5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 12. (a) If:

(1) a court recommends suspension of a person's driving privileges under section 10(b) of this chapter for an offense committed under this chapter; and

(2) the person did not refuse to submit to a chemical test offered under IC 9-30-6-2 during the investigation of the offense;

the court may stay the execution of the suspension of the person's driving privileges and grant the person probationary driving privileges for one hundred eighty (180) days.

(b) An order for probationary privileges must be issued in accordance with sections 11 and 13 of this chapter.

(c) If:

(1) a court recommends suspension of a person's driving privileges under section 10(c) ~~10(d)~~, or ~~10(e)~~, **10(h)** of this chapter for an offense committed under this chapter; and

(2) the period of suspension recommended by the court exceeds the minimum permissible fixed period of suspension specified under section 10 of this chapter;

the court may stay the execution of that part of the suspension that exceeds the minimum fixed period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay.

(d) In addition to the other requirements of this section, if a person's

1 driving privileges are suspended or revoked under section ~~10(f)~~ 10(i)
 2 of this chapter, a court must find that compelling circumstances
 3 warrant the issuance of probationary driving privileges.

4 (e) Before a court may grant probationary driving privileges under
 5 this section, the person to whom the probationary driving privileges will
 6 be granted must meet the burden of proving eligibility to receive
 7 probationary driving privileges.

8 SECTION 5. IC 9-30-5-15, AS AMENDED BY P.L.32-2000,
 9 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2004]: Sec. 15. (a) In addition to any criminal penalty imposed
 11 for an offense under this chapter the court shall:

12 (1) order:

13 (A) that the person be imprisoned for at least five (5) days; ~~or~~
 14 **and**

15 (B) **that** the person ~~to~~ perform at least thirty (30) days of
 16 community restitution or service; and

17 (2) order the person to receive an assessment of the person's
 18 degree of alcohol and drug abuse and, if appropriate, to
 19 successfully complete an alcohol or drug ~~abuse treatment~~
 20 program; ~~including an alcohol deterrent program if the person~~
 21 ~~suffers from alcohol abuse;~~

22 if the person has one (1) previous conviction of operating while
 23 intoxicated.

24 (b) In addition to any criminal penalty imposed for an offense under
 25 this chapter, the court shall:

26 (1) order:

27 (A) that the person be imprisoned for at least ~~ten (10)~~ **thirty**
 28 **(30)** days; or

29 (B) the person to perform at least sixty (60) days of
 30 community restitution or service; and

31 (2) order the person to receive an assessment of the person's
 32 degree of alcohol and drug abuse and, if appropriate, to
 33 successfully complete an alcohol or drug ~~abuse treatment~~
 34 program; ~~including an alcohol deterrent program if the person~~
 35 ~~suffers from alcohol abuse;~~

36 if the person has at least two (2) previous convictions of operating
 37 while intoxicated.

38 (c) **In addition to any criminal penalty imposed for an offense**
 39 **under this chapter, the court shall:**

40 (1) **order that the person be imprisoned for at least three (3)**
 41 **days; and**

42 (2) **order the person to:**

43 (A) **receive an assessment of the person's degree of**
 44 **alcohol and drug abuse; and**

45 (B) **if appropriate, successfully complete an alcohol or**
 46 **drug program;**

1 if the person is convicted of an offense under section 1(b) of this
2 chapter.

3 (d) In addition to any criminal penalty imposed for an offense
4 under this chapter, the court shall:

5 (1) order that the person be imprisoned for at least three (3)
6 days; and

7 (2) order the person to:

8 (A) receive an assessment of the person's degree of
9 alcohol and drug abuse; and

10 (B) if appropriate, successfully complete an alcohol or
11 drug program;

12 if the person was at least twenty-one (21) years of age at the time
13 of the offense and is convicted of an offense under section 1(a),
14 1(c), or 2 of this chapter in which at least one (1) passenger was
15 less than eighteen (18) years of age at the time of the offense.

16 (e) In addition to any criminal penalty imposed for an offense
17 under this chapter, the court shall order the person to:

18 (1) receive an assessment of the person's degree of alcohol
19 and drug abuse; and

20 (2) if appropriate, successfully complete an alcohol or drug
21 program;

22 if the person is convicted of an offense under section 4 or 5 of this
23 chapter.

24 (f) An assessment for alcohol and drug abuse required under
25 this section must be conducted by:

26 (1) a court established alcohol and drug services program
27 certified under IC 12-23-14;

28 (2) a circuit court alcohol abuse deterrent program
29 established under IC 9-30-9; or

30 (3) a drug court certified under IC 12-23-14.5.

31 In a county that does not have a program described in subdivision
32 (1), (2), or (3), the assessment must be conducted by an addiction
33 services treatment provider certified by the division of mental
34 health and addiction under IC 12-23.

35 (g) A court ordering a person to complete an alcohol or drug
36 program under this section must determine that the program is:

37 (1) certified under IC 12-23-14 or IC 12-23-14.5; or

38 (2) authorized under IC 9-30-9.

39 In a county that does not have a program described in subdivision
40 (1) or (2), the program must be conducted by an addiction services
41 treatment provider certified by the division of mental health and
42 addiction under IC 12-23.

43 ~~(e)~~ (h) Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, a sentence
44 imposed under this section may not be suspended. The court may

1 require that the person serve the term of imprisonment in an appropriate
 2 facility at whatever time or intervals (consecutive or intermittent)
 3 determined appropriate by the court. However:

4 (1) at least forty-eight (48) hours of the sentence must be served
 5 consecutively; and

6 (2) ~~the entire sentence a term of:~~

7 (A) imprisonment;

8 (B) community restitution or service; or

9 (C) both imprisonment and community restitution or
 10 service;

11 imposed under this section must be served within six (6)
 12 months after the date of sentencing.

13 ~~(d)~~ (i) Notwithstanding IC 35-50-6, a person does not earn credit
 14 time while serving a sentence imposed under this section.

15 SECTION 6. IC 9-30-10-5 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) If it appears from
 17 the records maintained in the bureau that a person's driving record
 18 makes the person a habitual violator under section 4 of this chapter, the
 19 bureau shall mail a notice to the person's last known address that
 20 informs the person that the person's driving privileges will be suspended
 21 in thirty (30) days because the person is a habitual violator according
 22 to the records of the bureau.

23 (b) Thirty (30) days after the bureau has mailed a notice under this
 24 section, the bureau shall suspend the person's driving privileges for:

25 (1) **except as provided in subdivision (2)**, ten (10) years if the
 26 person is a habitual violator under section 4(a) of this chapter;

27 (2) **life if the person is a habitual violator under section 4(a)**
 28 **of this chapter and has at least two (2) violations under**
 29 **section 4(a)(4) through 4(a)(7) of this chapter;**

30 (3) ten (10) years if the person is a habitual violator under section
 31 4(b) of this chapter; or

32 ~~(4)~~ (4) five (5) years if the person is a habitual violator under
 33 section 4(c) of this chapter.

34 (c) The notice must inform the person that the person may be
 35 entitled to relief under section 6 of this chapter or may seek judicial
 36 review of the person's suspension under this chapter.

37 SECTION 7. IC 35-48-4-15 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 15. (a) If a person is
 39 convicted of an offense under section 1, 2, 3, 4, 5, 6, 7, 10, or 11 of
 40 this chapter, or conspiracy to commit an offense under section 1, 2, 3,
 41 4, 5, 6, 7, 10, or 11 of this chapter, **and the court finds that a motor**
 42 **vehicle was used in the commission of the offense**, the court shall,
 43 in addition to any other order the court enters, order that the person's:

44 (1) operator's license be suspended;

45 (2) existing motor vehicle registrations be suspended; and

46 (3) ability to register motor vehicles be suspended;

1 by the bureau of motor vehicles for a period specified by the court of
2 at least six (6) months but not more than two (2) years.

3 (b) If a person is convicted of an offense described in subsection (a)
4 and the person does not hold an operator's license or a learner's permit,
5 the court shall order that the person may not receive an operator's
6 license or a learner's permit from the bureau of motor vehicles for a
7 period of not less than six (6) months.

8 SECTION 8. [EFFECTIVE JULY 1, 2004] (a) **IC 9-30-5-3 and**
9 **IC 9-30-5-5, both as amended by this act, apply only to offenses**
10 **committed after June 30, 2004.**

11 (b) **IC 9-30-5-10, IC 9-30-5-15, and IC 9-30-10-5, all as**
12 **amended by this act, apply only if the last offense was committed**
13 **after June 30, 2004."**

14 Renumber all SECTIONS consecutively.

(Reference is to EHB 1394 as printed February 18, 2004.)

Senator YOUNG R MICHAEL